

COMMISSIONERS APPROVAL

GRANDSTAFF *CG*

ROKOSCH *J.R.*

CHILCOTT *R*

DRISCOLL *KD*

IMAN *JE*

PLETTENBERG (Clerk & Recorder)

Date.....January 21, 2009

Members Present..... Commissioner Carlotta Grandstaff, Commissioner Greg Chilcott, Commissioner Kathleen Driscoll and Commissioner J.R. Iman

Minutes: Glenda Wiles

► Commissioner Rokosch attended the Environmental Health grant submittal to the 319 Program Selection Committee in Helena.

► The Board met to interview Fair Manager applicants. Closed door was invoked due to personnel issues.

► Commissioner Chilcott participated in a conference call with MACo Urban Counties Legislation at noon.

► The Board met for a public meeting for an appeal on a subdivision exemption denial for Linda Ledoux. Present at this meeting was Clerk & Recorder Regina Plettenberg, Planners Tristan Riddell and Randy Fifrick. Also present was Deputy County Attorney and Civil Counsel for the Commissioners, Karen Mahar.

Karen informed the Commissioners how the process works under the regulations. Regina stated these appeals are done on a case by case basis. Linda Ledoux was then placed on conference call and relayed the following. She and her daughter started this process in early 2006 and it took forever to get it done between the consultant and the surveyor. The process was not completed until April 2008 and her intent was never to evade the regulations. She had intended to build on this parcel for her retirement. However, in Florida, the real estate market has declined and she has exhausted all of her savings and assets. Now she will never recover this and be able to build on this land. She felt she was approaching a three year mark for the requested exemption. At this point she needs to sell the land, although she hates to sell the land. She stated she understands how this might look, but it was not as though she did this process with the attempt to evade the

laws. The family transfer process was started in early 2006 by hiring a consultant. The consultant did not move very quickly. She spent over \$4,000 hiring the consultant and surveyor.

Commissioner Chilcott asked when the application was submitted to the Planning Department. She stated her daughter and son-in-law submitted this application so she is not sure of the exact time, possibly the end of '06 or the first part of '07. Tristan stated the application was submitted on August 9, 2007. Commissioner Chilcott asked Linda what her original intention was for the property. Linda stated she was going to build a home and spend her summers in Montana. Currently her financial status means she may have to move into her son's home. She stated the planning process in the County was not necessarily slow, but rather the time it took her to work through the survey and deed recording. Commissioner Chilcott asked what her daughter and son-in-law do in Ravalli County. She stated her daughter is a homemaker and her son-in-law works for the Forest Service.

Karen then explained the presumptive rebuttal. She read Montana Law on family transfers noting the intent is to allow a parcel to be broken off of a main parcel in order for a family member to use the ground, not turn around and sell it. The 3-year rebuttable presumption is that if the lot is sold before the 3-years, there could be intent to evade the regulations. The County does look at any transfers that occur after 3-years. There is no magic date to transfer this without any scrutiny.

Regina stated she looks at these as a case by case issue. In Linda's letter she addressed the fact that Linda addresses her financial hardship prior to the transfer. Linda stated no one anticipated the economic downfall to occur. Major department stores are closing and people are leaving Florida. Although stores were closing in 07, they had not bottomed out, and now things are even worse. Linda stated she has been through up and down markets before, but this is bad and at 61 years old she has never had a problem of this nature. She indicated she can never recover from this.

Commissioner Chilcott believes when the Legislators considered this exemption they looked at this as family transfers in order for families to continue farming activities. The exemption does not allow the public to weigh in on subdivisions. The public participation is a fundamental right of Montanans to weigh in on subdivisions. Although he understands her intent was not to evade, the public is not able to participate in the subdivision process if an exemption is utilized in this manner. Karen stated she agrees with Commissioner Chilcott. Karen stated Linda could re-aggregate and go through the subdivision review process.

Commissioner Grandstaff addressed the de-facto subdivisions that occur if they do not keep a handle on the exemptions. Recently the county addressed this issue in regard to a road that was built for several lots that were done in a family transfer then sold. Linda stated she assumes that process would be lengthy and expensive. This parcel is the last parcel on the road, and the parcels next to this are her daughters. The parcel is off of Evengson Lane off of Prairie Lane in Stevensville.

Karen noted the County has the COS and asked if the lots were purchased under a separate subdivision. Linda stated they were purchased from the closest neighbor. Karen asked if the daughter deeded a parcel to her daughter. Linda stated her daughter deeded a parcel to her 4-year old and it is not for sale. Karen stated this parcel looks to be part of a community and it should be looked at for septic, roads etc., which is a concern of the subdivision review process.

Commissioner Iman asked if the parcel was 13 acres. Linda stated that is correct. The easement is along a canal (irrigation ditch). Commissioner Iman stated his concern is whether this is part of a county road. Linda stated it is not a county road; rather it is part of her daughter's road. Karen asked if the road was built to serve the number of lots that were created. Linda stated that is correct. She also noted she is not using the irrigation canal road to access her property. She follows Prairie Lane to Evengson Lane that takes a bridge over the ditch, then a road to the three lots. The road was put in by her daughter. Karen noted the COS does not show a road access to her lot. Linda stated maybe her road is really not a road, but rather her daughter's driveway. Karen stated part of the Commissioners job is to make sure each lot has access to their lot for emergency services.

Commissioner Chilcott addressed how hardship is defined, and under Montana law it is not a "financial" hardship. Karen stated financial hardship is not a criterion they can consider. Montana is experiencing what other states are experiencing, as others are asking this same question about selling off a family transfer lot. The county receives at least a hundred requests per year with this same type of issue.

Regina stated she understands Linda's difficult position but they must follow the law.

Commissioner Chilcott made a motion to deny the appeal. Commissioner Driscoll seconded the motion. Commissioner Iman stated even if they approved this request, the lot does not appear to have legal access, so Linda needs to address that to any future decision she makes. Linda asked how she could re-aggregate the lots. Commissioner Grandstaff stated Linda needs to contact the Planning Department and gave her their number. Commissioner Chilcott stated he wanted to add to his motion the following: that the appeal be denied based on the findings of fact. Commissioner Driscoll seconded this additional language. All voted "aye" to deny this appeal.

Discussion took place by the Board on the process of transfers and subdivision and the lack of proper easements that might exist on certain parcels that are then 'owned' by future lot owners. The intent of the exemptions was also discussed under Montana Law based upon the agriculture practices in Montana.

► Commissioner Driscoll attended the Darby Business Consulting Group meeting at Darby Library.